

Enforceability of Decrees

How Enforcement Works:

Old District Court decrees are enforced until a new decree is entered by the Water Court.

If a prior decree is unavailable, then water rights can be certified from the District Court to the Water Court. Once the Water Court decides the rights at issue, it prepares a tabulation of those rights and returns the tabulation to the District Court for distribution and enforcement.

Final decrees of the Water Court are enforceable by District Courts. Enforceability of other decrees is unclear.

Statutes regarding enforceability are inconsistent.

As an example, Section 85-2-406(4), MCA states a temporary preliminary decree or preliminary decree “as modified after objections and hearings is enforceable and administrable according to its terms.”

The statute does not explain whether all objections to all water rights must be resolved before the decree becomes enforceable. It does not address enforceability of water rights that have not received objections or issue remarks.

There is also potential conflict between Section 85-2-406(4), MCA and other statutes. Other statutes do not state that a decree is enforceable only after it is modified by objections and hearings.

Section 85-5-101(1), MCA states “it is the duty of the judge of the district court” to appoint a water commissioner to distribute water when water rights “have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge... .”

Once appointed, a water commissioner has authority to distribute water “as fixed by the decree.” In addition, Section 85-5-201(1), MCA states a water commissioner “has the authority to determine the appropriate quantity and distribute to the parties interested, under a decree... the water to which those who are parties to the decree... are entitled... .” Sections 85-5-101(1), and 85-5-201(1), MCA do not reference the need for decrees to be modified by objections and hearings before they are enforceable.

These statutes need to be changed so it is clear when a decree may be enforced.

The 15% Problem:

Section 85-5-101(1), MCA states a water commissioner can be appointed “upon the application of the owners of at least 15% of the water rights affected by the decree....”

This language is confusing. It could refer to 15% of the rights in the decree or 15% of the rights as determined by flow rate. It might also mean that only the owners of water rights in a decree can file a petition. This is a potential problem if an old District Court decree is being used for enforcement.

Fifteen percent is not required if the applicant can't get enough support to sign a petition and “they are unable to obtain the water to which they are entitled... .”

This statute needs to be changed so the threshold for appointment of a water commissioner is clear.